

DAVID PAYNE 10-14-22

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IN THE UNITED STATES BANKRUPTCY COURT FOR	
FOR THE NORTHERN DISTRICT OF OKLAHOMA	
AMERICAN NATION BANK,	)
	)
Plaintiff,	)
	)
vs.	) Case No. 20-11645-M
	)
VAN WOO,	)
	)
Defendant.	)
<hr/>	

ORAL DEPOSITION OF DAVID PAYNE  
TAKEN ON BEHALF OF DEFENDANT  
IN TULSA, OKLAHOMA  
ON OCTOBER 14, 2022

REPORTED BY: MICHELE VEST, CSR

TULSA FREELANCE REPORTERS  
918-587-2878

Exhibit 4

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1        **contested litigation matters necessarily.**

2        Q     How many employees does D.R. Payne have total?

3        A     We are -- I'd say we're twelve professionals. I  
4        think there's ten W-2 employees, and then we have --  
5        I have a partner who is a valuator and appraiser who  
6        is not an employee. So we're generally a dozen  
7        professionals.

8        Q     All right, sir. I'm going to ask you to turn to page  
9        23 of your report, so at the end. This would be  
10       Article Subsection V, I guess. Roman Numeral V. Do  
11       you see that?

12       A     Yes.

13       Q     So, Mr. Payne, did you prepare this report?

14       A     Yes.

15       Q     Okay. And there at the end of the paragraph you  
16       state, "No person provided significant professional  
17       assistance other than supporting analytical  
18       assistance to the person signing this report."

19               That is correct?

20       A     Yes.

21       Q     Okay. When you say "other than" -- that  
22       parenthetical there, "other than supporting  
23       analytical assistance," what do you mean by  
24       "supporting analytical assistance"?

25       A     Work that can be assisting and reviewing documents,

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1 setting up spreadsheets, doing analytics and that  
2 type of work, as opposed to being more involved in  
3 formulating the report or offering an opinion. And  
4 at least under the appraisal standards, if a party  
5 does more than support kind of analytics, if you  
6 will, there are requirements to make a disclosure of  
7 that. Now, it's not required for a litigation, but  
8 we kind of follow that principle. And if one of the  
9 other more senior parties in our practice, like,  
10 another director does substantive work, I'll have  
11 them cosign a report with me, for example. So in  
12 this case, I had support, but nobody in the team that  
13 worked on this rose to the level of offering, kind  
14 of, a co-opinion or analysis. They provided  
15 analytics. They may understand parts of the report  
16 and things, but, didn't, you know, author it with me,  
17 that kind of thing.

18 Q And I guess that also addresses the phrase in that  
19 sentence that says "significant professional  
20 assistance"?

21 A Right. So, you know, that kind of disclosure comes  
22 out of the American Society of Appraisers, but we use  
23 it in these matters to -- because I do have a number  
24 of reports that get cosigned or somebody does a  
25 substantial amount of work, but I may be testifying

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1 to the matter. And I think that's, you know, just  
2 full disclosure of the level of support that we have  
3 if I'm doing the testimony.

4 Q Appendix C that is referenced and attached to your  
5 report, you state again on page -- and don't turn to  
6 it yet, because I'm still going to ask you about page  
7 23, I believe.

8 I apologize. I'm going to ask you to turn to  
9 page 5 of your report. Are you there?

10 A Yes, I have that.

11 Q Sorry. At the beginning of that sentence you state,  
12 "My opinions included herein represent summarized,  
13 written descriptions of areas of testimony, the  
14 summary exhibits and demonstrative aids attached as  
15 Appendix C are incorporated as supportive analysis  
16 serving as the bases, reasons and/or opinions to  
17 support the summary opinions set forth herein."

18 And that I assume is still correct?

19 A It is, yes.

20 Q Is it fair to say that all of the opinions that you  
21 give in your report are supported by documentary  
22 evidence that is either referenced or included in  
23 Appendix C?

24 A Appendix C would be summaries of more voluminous  
25 information, generally. The set of data and

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1 information relied on is disclosed on the schedule  
2 and dated information set forth in the report, so.  
3 But any -- you know, when you have bank statements or  
4 other multi-year financial statements, for example,  
5 and you want to see the movement of assets and  
6 liabilities or trends, you know, you tend to create  
7 summaries that are of assistance. And that's really  
8 what, you know, Appendix C is, are summaries of more  
9 voluminous information. And the documents that were  
10 used to create those summaries, we've disclosed in  
11 the report.

12 Q Right. So, yes, obviously not every bank statement  
13 is included in the appendix that you reviewed as  
14 included in Appendix C, but at least they are all not  
15 only bank statements but other documents which you've  
16 used in your analysis are either referenced or  
17 summarized in Appendix C; is that correct?

18 A Referenced or summarized, yes.

19 Q You stated earlier when I asked you about your  
20 professional qualifications that you are -- just --  
21 so I don't want to get it wrong -- that you are a  
22 CPA, that you hold a -- or, I'm sorry, you're a  
23 certified insolvency and restructuring advisor, as  
24 well as a certified turnaround professional; correct?

25 A Yes.

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1 Q Are you familiar with the Certified in Financial  
2 Forensics course that's offered by the AICPA?

3 A I am, yes.

4 Q And also, I assume you're familiar with the Certified  
5 Fraud Examiners course that's offered by the ACFE?

6 A Yes.

7 Q Okay. But you don't hold either one of those  
8 designations?

9 A Correct.

10 Q Have you ever considered obtaining those credentials?

11 A You know, I have, but in the organization that I'm  
12 president of currently, AIRA, we teach forensics in  
13 our materials. Those forensics are geared more  
14 towards insolvency, restructuring and recovery  
15 actions whereas the CFE is more, in my view -- from  
16 their course materials and we've had people on our  
17 staff that's are -- have gone through the CFE  
18 program -- it's more prosecutorial in nature. You  
19 know, it crosses over a lot into the criminal. It  
20 doesn't really touch on a lot of the forensic areas  
21 in insolvencies and restructuring. And it's really  
22 the same way for the AICPA. I mean, I think they're  
23 both good programs. But I just haven't had the need  
24 to go through those programs just because of the  
25 baseline that we have in AIRA with forensic wrapping

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1 regarding badges of fraud factors, which have been  
2 set forth in uniform fraudulent transfer act  
3 statements, UFTA, in the Internal Revenue Code, IRC,  
4 are summarized below."

5 The UFTA factors that you list on page 3, are  
6 those enumerated in a specific statute, in the  
7 uniform act or anywhere?

8 A I think they're enumerated more specifically in cases  
9 that deal with the UFTA as, you know, generally  
10 recognized factors of conduct and transactions that  
11 cut across the elements of the UTA, dealing with lack  
12 of reasonable consideration, insolvency, you know,  
13 other elements that might indicate intent, as opposed  
14 to just constructive-type fraudulent transfers. So,  
15 you know, a lot of that is enumerated in cases that  
16 are sitting where the claim arises under a state UFTA  
17 kind of statute, but the facts and the elements  
18 considered under UFTA are enumerated in cases.

19 Q So it's --

20 A And it's also been published in articles and  
21 treatises, you know, and things of that nature too.

22 Q So this is, to some extent, at least it's court-made  
23 law or these -- these factors have been identified by  
24 courts in reviewing fraudulent transfer acts?

25 A Yes.

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1 Q Similarly, are the Internal Revenue Code or the IRC  
2 factors that you cite to, are those spelled out at a  
3 specific place in the Internal Revenue Code?

4 A They are spelled out in the -- it's not directly in  
5 the statute, but the Internal Revenue Service has  
6 published those, if you will, related to the Internal  
7 Revenue Code, in looking at this type of conduct from  
8 a tax perspective.

9 Q Okay. So have they issued advisory opinion-time  
10 documents to general, like, practitioners and the  
11 public?

12 A I don't know if they characterize it as advisory  
13 opinion. It would be more of a -- many times the  
14 service, Internal Revenue Service, will provide a  
15 checklist and data elements that are considered by  
16 the service for taxpayers to be, you know, aware of  
17 in their investigations and services that they -- you  
18 know, the service provides.

19 Q And I realize that may be difficult given that you've  
20 been practicing for over 30 years, but can you try to  
21 put a general number on the number of cases, both  
22 state and federal, that you've testified in, in which  
23 your analysis or your opinions dealt with fraudulent  
24 transfers, the tracing of funds or providing forensic  
25 accounting services?



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1 A I don't have a number. You know, we did -- like for  
2 example, in the company I went to work for, after I  
3 left Ernst and Whinney, Amarex, Inc., I got put into  
4 an involuntary bankruptcy in 1982. As we got towards  
5 the end of that case in 1985, I was asked to do an  
6 insolvency analysis. There was, I don't know,  
7 \$50 million of preferential and potential fraudulent  
8 transfers. You know, so that was the first time I  
9 really touched those elements. And, you know, it's  
10 just kind of a regular -- or at least some of these  
11 elements, it's not always badges of fraud. But in  
12 each bankruptcy case you have to have some, you know,  
13 recognition of this if you're working for the debtor,  
14 of course, to make initial disclosures or just carry  
15 through with the duties of the debtor in possession  
16 or the trustee so. It's going to be quite a few. I  
17 don't know what number it would be.

18 Q You stated in your report that you have -- and I  
19 believe you testified earlier, that you have acted as  
20 a trustee on many occasions. You're not a Chapter 7  
21 panel trustee, are you?

22 A No.

23 Q Are you referring to being a Chapter 11 trustee?

24 A A Chapter 11 trustee; correct, or a private -- I've  
25 served in non-bankruptcy trustee roles.